

# **Exhibit B to Rabenstein Declaration**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3

4 \_\_\_\_\_  
5 ASTELLAS INSTITUTE FOR  
6 REGENERATIVE MEDICINE, et al.,

7 Plaintiffs,

Civil Action  
No. 17-cv-12239-ADB

8 v.

June 9, 2020

9 IMSTEM BIOTECHNOLOGY, INC.,  
10 et al.,

11 Defendants.

Pages 1 to 24

12 \_\_\_\_\_  
13 TRANSCRIPT OF HEARING  
14 BEFORE THE HONORABLE ALLISON D. BURROUGHS  
15 UNITED STATES DISTRICT COURT  
16 JOHN J. MOAKLEY U.S. COURTHOUSE  
17 ONE COURTHOUSE WAY  
18 BOSTON, MA 02210  
19  
20  
21

22 JOAN M. DALY, RMR, CRR  
23 Official Court Reporter  
24 John J. Moakley U.S. Courthouse  
25 One Courthouse Way, Room 5507  
Boston, MA 02210  
joanmdaly62@gmail.com

1 APPEARANCES:

2 FOR THE PLAINTIFFS:

3 DAVID P. FRAZIER, ESQUIRE  
4 REBECCA L. RABENSTEIN, ESQUIRE  
Latham & Watkins, LLP  
5 555 11th Street, N.W.  
Suite 1000  
6 Washington, DC 20004-1304  
202.637.2259  
7 david.frazier@lw.com  
rebecca.rabenstein@lw.com  
8

9 FOR THE DEFENDANTS:

10 BENJAMIN M. STERN, ESQUIRE  
Verrill Dana, LLP  
11 One Federal Street, 20th Flr.  
Boston, MA 02110  
12 617.309.2600  
Bstern@verrill-law.com  
13

14 TIMOTHY R. SHANNON, ESQUIRE  
MARTHA C. GAYTHWAITE, ESQUIRE  
15 Verrill Dana, LLP  
One Portland Square  
16 P.O. Box 586  
Portland, ME 04112-0586  
17 207.774.4000  
Mgaythwaite@verrilldana.com  
18 tshannon@verrilldana.com  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on June 9, 2020.)

THE CLERK: This is civil action 17-12239, Astellas versus ImStem Biotechnology. Can counsel identify themselves for the record.

MR. FRAZIER: David Frazier from Latham & Watkins for the plaintiff Astellas.

MS. RABENSTEIN: Rebecca Rabenstein from Latham & Watkins for the plaintiffs Astellas.

MR. SHANNON: Good morning. Timothy Shannon from Verrill Dana for the defendants.

MS. GAYTHWAITE: Good morning. Martha Gaythwaite from Verrill Dana also for the defendants.

MR. STERN: Good morning. Benjamin Stern from Verrill Dana also for the defendants.

THE COURT: All right. So we continued this I guess about 60 days ago. At the moment the Court is scheduled to resume jury trials the first week in September. We haven't quite decided the priority of cases, but I'm guessing it's going to be criminal cases and then civil and

1 then the oldest criminal cases. We'll do people in custody  
2 and then by age after that, by not in custody and then age  
3 after that. I'm guessing there's no way we get a trial date  
4 for this before October at the very very earliest.

5 I know you guys have some international travel  
6 involved in this. So what I would like to do is get a date  
7 by which this case will be trial ready. And when our name  
8 comes up in the queue, we'll be ready to go. What are your  
9 thoughts on that?

10 MR. FRAZIER: Your Honor, this is David Frazier  
11 from Latham & Watkins for Astellas. I've had a chance to  
12 discuss this with my counterpart for ImStem, Mr. Shannon. We  
13 had anticipated the difficulties the Court may have with the  
14 logistics of restarting jury trials and the need to deal with  
15 criminal cases first. And so at this point Astellas would be  
16 willing to waive the right to a jury trial and try all the  
17 issues to the bench if that would be a way to get us to trial  
18 faster.

19 THE COURT: Mr. Shannon, what is your view on that?

20 MR. SHANNON: Good morning, Your Honor. We think a  
21 bench trial is appropriate. It avoids the jury problem. It  
22 gets us on the docket sooner. It reserves party and judicial  
23 resources. We think it makes sense. We would add in the  
24 extra dimension, and I think it's a helpful one, that it can  
25 be done in part by video. And that would be a particularly

1 helpful accommodation for our witnesses and our party in  
2 China. I'm happy to explore their travel limitations with  
3 you about that.

4 THE COURT: If we're going to do a bench trial, we  
5 can do the whole thing by Zoom. Okay?

6 MR. SHANNON: Yes.

7 THE COURT: Then I don't need to concern myself  
8 with anybody's travel issues. If we did a bench trial,  
9 normally I try even a bench trial from 10 to 4, and I just  
10 don't think that is going to make sense in the current  
11 climate, especially dealing with time changes. So what would  
12 you guys -- What would your view be for a daily schedule, or  
13 would you want to move it around depending on who the  
14 witnesses were?

15 MR. SHANNON: Your Honor, this is Tim Shannon for  
16 the defendants. We're entirely flexible. Our only request  
17 is that for the witnesses in China we have a day or two where  
18 we start on the earlier side because they are 12 hours  
19 offset.

20 THE COURT: I'm just thinking about a schedule  
21 that's going to be manageable for all of us. We could do  
22 something like two hours in the morning and two hours in the  
23 afternoon or an hour and a half in the morning and hour and a  
24 half in the afternoon, or we can just play it by ear  
25 depending on who the witnesses are. Maybe that's just the

1     easiest way to do it. Say we assume -- let's take it right  
2     in the middle. Let's assume three and a half hours of  
3     testimony a day. How long are you envisioning the trial  
4     would take?

5             MR. FRAZIER: Your Honor, this is David Frazier for  
6     Astellas. I think the trial had originally been set at ten  
7     days with the idea of approximate half days. I wonder if we  
8     should perhaps leave a window then with the ability to reduce  
9     it. I don't know if that's possible for the Court's  
10    schedule. I am cognizant that logistics are a little bit  
11    more cumbersome if we're going to go entirely by Zoom. And  
12    so I would think that less than ten days would be necessary,  
13    but I have a hard time figuring out exactly how many fewer  
14    than ten days we would need.

15            THE COURT: Why don't we just set aside two weeks.  
16    When do you guys think you would be ready to go?

17            MR. SHANNON: Your Honor, this is Tim Shannon for  
18    the defendants. We've canvassed our witnesses and experts.  
19    Everyone is available the week of August 3. Most everyone is  
20    available the week of August 10. We might have to juggle one  
21    witness and take him out of order if the Court would  
22    accommodate. Or alternatively we canvassed the three weeks  
23    of September 7, 14, and 21.

24            I will confess we just sorted that out in the last  
25    couple of days. So I don't know if plaintiffs have had a

1 chance to check those dates, but those at least on our end  
2 are available.

3 MR. FRAZIER: This is David Frazier again. We  
4 don't have the exact availability, but I think any of those  
5 timeframes we can certainly aim for and get back to the Court  
6 very quickly to just confirm that the witnesses are available  
7 in that window. The second half of August into September I  
8 think would be great for us as well.

9 THE COURT: I am just not sure what I am going to  
10 be doing with my kids this summer. It's possible that three  
11 or four hours a day is going to be ambitious just depending  
12 on where I end up with them. I think the safer thing is  
13 September, if that's all right with everyone.

14 MR. FRAZIER: Yes, Your Honor.

15 MR. SHANNON: Yes, Your Honor.

16 THE COURT: Karen, how do the weeks of the 14th and  
17 the 21st look? Two weeks, September 14 and September 21.

18 THE CLERK: We have a trial scheduled.

19 THE COURT: Which one?

20 THE CLERK: Beltran. It's not as old. It's a  
21 civil.

22 THE COURT: That's scheduled for one week on the  
23 14th?

24 THE CLERK: Yes. The 21st we have a criminal that  
25 we had already moved.



-----

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

June 22, 2020

Date